U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: WAC 98 222 50098 Office: California Service Center Date: DEC 29 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

Identifying [illegible] to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DEC 1900-0102202

DISCUSSION: The employment-based immigrant visa petition was denied by the director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established sustained international acclaim.

The petitioner is a bodybuilder. The director, in denying the petition, stated that the petitioner "is well-known and successful in the U.S.; however, it has not been demonstrated that he is among the best of the very best throughout the world." The director also acknowledged that the petitioner was crowned [redacted] in 1989, 1990, and 1991, but stated "that is only considered a national competition and does not satisfy the international standard that the alien is held to."

In differentiating between national and international acclaim, the director has stated "[i]n that professional bodybuilding is a field of endeavor that is international in scope . . . it must be established that the beneficiary is at the pinnacle of his field worldwide."

The director here misinterprets the statutory and regulatory language. The director, relying on the regulatory reference to "that small percentage who have risen to the very top of the field of endeavor," regards the petitioner's field of endeavor as being inherently international, and holds therefore that only internationally-known bodybuilders have reached the top of the field.

While the director's reasoning is understandable, there is no statutory or regulatory support for the contention that "international" fields of endeavor require a higher standard of proof than "national" fields. Nothing in the statute or regulations gives the director discretion to designate various fields of endeavor as "national" or "international."

The underlying statute requires "sustained national or international acclaim." An alien who has reached the top of the field in a given country can, therefore, qualify for this classification, provided the alien is able to meet the other statutory and regulatory requirements. There is no support for placing a heavier burden on aliens in some occupations than in others. Furthermore, the reference to the "top of the field" occurs in the regulations but not in the statute, and therefore it

cannot supersede the statutory assertion that sustained national acclaim satisfies the terms of section 203(b)(1)(A)(i) of the Act.

There is no indication that the director attempted any full determination as to whether the petitioner has earned sustained national acclaim in Australia, the United States, or any other country. This office will offer no such determination at this time, because the initial determination properly lies within the director's province.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.